

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

Bail Appl..No. 7283 of 2007()

**CP.84/2007 of J.M.F.C.-II,NEDUMANGAD
CRIME 719/04 OF NEDUMANGAD POLICE STATION**

: PETITIONERS/ACCUSED 4 & 5

- 1. SHIBU, S/O. CHANDRA BABU,
KAILAS VEEDU, ERAVIPURAM, KOLLAM DISTRICT.**
- 2. MANU, S/O. XAVIER,
KARAKKAT BHAVAN, ERAVIPURAM, KOLLAM DISTRICT.**

BY ADV. SRI.B.MOHANLAL

RESPONDENTS: COMPLAINANT

**STATE OF KERALA, REPRESENTED BY
THE CIRCLE INSPECTOR OF POLICE, NEDUMANGAD POLICE
STATION, KOLLAM DISTRICT, THROUGH THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 04/12/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

R. BASANT, J.

B.A. No. 7283 OF 2007 C

Dated this the 4th day of December, 2007

O R D E R

Application for anticipatory bail. The petitioners are accused Nos.4 and 5. They face indictment in a prosecution for an offence punishable, inter alia, under Section 307 IPC. Investigation is complete. Final report has already been filed. Cognizance has been taken by the learned Magistrate. Committal proceedings have been registered. The petitioners have not entered appearance so far. They apprehend arrest in execution of coercive processes issued by the learned Magistrate.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. The alleged incident had taken place on 17.10.04. The petitioners have been arrayed as accused only long later on 8.9.05. The learned counsel for the petitioners submits that the petitioners were not arrested in the course of the investigation. They have been unnecessarily brought into the array of accused. They may be saved from the trauma of arrest and incarceration. Appropriate conditions may be imposed, it is prayed.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor only submits that there are no circumstances to invoke the extraordinary equitable discretion under Section 438 Cr.P.C. at this stage. The petitioners may be directed to surrender before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the normal and ordinary course, submits the learned Public Prosecutor.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. The case diary has been placed before me.

5. After the decision in ***Bharat Chaudhary and another Vs. State of Bihar*** [AIR 2003 SC 4662], it is now trite that powers under section 438 Cr.P.C. can be invoked in favour of a person who apprehends arrest in execution of a non-bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded, in the facts and circumstances of this case, that any such reasons exist.

6. It is for the petitioners to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which they could not earlier appear before the learned Magistrate. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioners on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in ***Alice George Vs. Deputy Superintendent of Police*** [2003 (1) KLT 339].

7. In the result, this petition is dismissed but with the specific observation that if the petitioners surrender before the learned Magistrate and apply for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

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